STATE OF MICHIGAN

COURT OF APPEALS

JAMIE D. SORSEN and CAROL E. SORSEN,

Plaintiffs/Counter-Defendants/Appellees-Cross-Appellants,

v

DONNA RANDALL and THOMAS RANDALL,

Defendants,

and

ROLAND LASCO and RONALDA LASCO,

Defendants/Cross-Plaintiffs/Counter-Plaintiffs/Appellants-Cross-Appellees,

and

JOSEPH BARDEN and MARY E. BARDEN,

Third-Party Defendants-Appellees,

and

TINGLEY & ASSOCIATES, P.C., and WILLIAM TINGLEY,

Third-Party Defendants.

UNPUBLISHED
July 1, 2008

No. 276474
Montcalm Circuit Court
LC No. 04-002848-CH

Before: Bandstra, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

Defendants Roland and Ronalda Lasco (defendants) appeal as of right the trial court's judgment quieting title in plaintiffs Jamie and Carol Sorsen (plaintiffs). Defendants also appeal

the trial court's order granting third-party defendants Joseph and May Barden (the Bardens) summary disposition and finding defendants' fraud claim to be frivolous. Plaintiffs cross-appeal as of right the trial court's order denying mediation sanctions. We affirm in part and reverse in part. We remand for entry of an order consistent with this opinion.

This action arises from a dispute between plaintiffs and defendants as to the boundary between their adjoining parcels of lakefront property in Spaulding's Plat, Douglas Township. Plaintiffs own lot 32, having acquired it from the Bardens in December 2002; the Bardens acquired lot 32 from defendants Donna and Thomas Randall (the Randalls) in 1997. Defendants own lot 31, having acquired it from the Randalls by virtue of an October 1988 land contract. The Randalls acquired lot 31 in 1972; they acquired lot 32 in 1980. The two lots are separated by a block wall; the owners of both lots recognized this to be the boundary line between them, at least from 1972, when the Randalls acquired lot 31, until 1997, when the Randalls sold lot 32 to the Bardens. During the course of their purchase of lot 32 from the Bardens, plaintiffs obtained a survey of the property, which indicated that the boundary between the lots was not delineated by the block wall.

After the plaintiffs' took possession of lot 32, in 2002, they began to assert ownership over the disputed piece of property between the block wall and the property line depicted in the survey, including positioning their dock so as to interfere with defendants' activities, destroying defendants' flower garden, twice destroying defendants' water pump, and removing railroad ties. Then, in April 2004, plaintiffs filed action to quiet title, to establish the boundary between the properties as consistent with the survey. The trial court summarily disposed of defendants' claim of acquiescence to the boundary delineated by the block wall for the statutorily prescribed period, and ultimately, plaintiffs prevailed on defendants' claim of acquiescence arising from intention to deed to a marked boundary following trial. The trial court declined, however, to award plaintiffs mediation sanctions.

Defendants assert that the trial court erred by granting summary disposition to plaintiffs on the issue of acquiescence for the statutory period. We agree. We review de novo the grant or denial of a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). On review, evidence is limited to that which was properly before the trial court at the time the motion was decided. *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 310, 313 n 4; 660 NW2d 351 (2003). We also review de novo equitable actions, such as those to quiet title, but the trial court's factual findings are reviewed for clear error. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001); *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996).

Where adjoining property owners acquiesce to a boundary line for more than the statutorily required fifteen years, that line becomes the actual boundary line between their properties regardless of subsequent surveys or later conduct of the parties to disavow it. *Johnson v Squires*, 344 Mich 687, 692-3; 75 NW2d 45 (1956); *Killips, supra*, 260-261. This acquiesced property line becomes the actual, legal property line between the properties. The acquiescence of predecessors in title can be tacked onto that of the parties to establish the required fifteen-year period. *Killips, supra*, 260. See also *Jackson v Deemar*, 373 Mich 22, 25-26; 127 NW2d 856 (1964). As observed by our Supreme Court:

> "It has been repeatedly held by this Court that a boundary line long treated and acquiesced in as a true line, ought not to be disturbed on new surveys. . . . Fifteen years' recognition and acquiescence are ample for this purpose . . . and in view of the great difficulties which often attend the effort to ascertain where the original monuments were planted, the peace of the community requires that all attempts to disturb lines with which the parties concerned have long been satisfied should not be encouraged." [*Johnson, supra,* 692 (quoting *Dupont v Starring,* 42 Mich 492, 494; 4 NW 190 (1880), citations and internal punctuation omitted).]

The trial court summarily disposed of defendants' claim of acquiescence for the statutory period because it found that defendants had failed to prove the requisite time period; the trial court did not address the Randalls' acquiescence to the boundary, nor did it tack the Randalls' period of acquiescence to that of defendants when reaching this conclusion. However, the record at the time of summary disposition included affidavits filed by the Randalls, which stated:

> The boundary (hereinafter, the "Property Line") between Lots 31 and 32 is located by starting at the Southeast corner of Lot 32 (the Northwest Corner of Lot 31) and walking in a straight line to the Eastern-most corner of the block wall was located on Lot 32 and, from there, to the shoreline at the Northern end of the railroad ties that run along the shore of Lot 31. Further, the block wall and railroad ties provide a clear marker, and the line had marked the Property Line since before we, the Randalls, owned both Lots 31 and 32.

Additionally, the Randalls' original answer in the litigation stated as an affirmative defense that "[s]ubstantially all the people in the plat have relied on the boundary line between lots 31 and 32 as being that line described [by] the Randalls in their Affidavits."[1] These statements, present in the record at the time the trial court granted plaintiffs' request for summary disposition, established a material question of fact as to whether the requisite statutory period of acquiescence occurred. Further, while the trial court correctly determined that defendants do not meet the statutory period for acquiescence based solely on their own possession of lot 31,[2] they are entitled to tack on any acquiescence by the Randalls that occurred during the Randalls' ownership of lot 31 and lot 32. *Killips, supra*; *Jackson, supra.* Clearly, the Randalls owned the lots at issue for more than the 15-year statutory period, and during that time, they treated the block wall as the boundary between the lots. Therefore, taking all of these facts in favor of defendants as the nonmoving party, *West v Gen Motors Corp,* 469 Mich 177, 183; 665 NW2d 468 (2003), plaintiffs did not establish that they were entitled to judgment as a matter of law.

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[1] Although Thomas Randall filed an affidavit of discharge in September 2004 stating that certain facts contained in his original affidavit were erroneous, he testified at his deposition in April 2005 that the boundary line ran along the block wall.

[2] Defendants acquired title to lot 31 in October 1988 and plaintiffs took possession of lot 32 in December 2002 and began to oust defendants by spring 2003, thereby cutting short the 15-year period.

Therefore, the trial court erred in granting plaintiffs summary disposition on defendants' claim of acquiescence for the statutory period.

Moreover, at the conclusion of the trial, the trial court expressly found that everyone but plaintiffs "agreed that the property line or boundary line between lot 31 and lot 32 was the block wall" and that "Ms. Randall said it best when she said the boundary line was always—the boundary always used was the block wall." Donna Randall testified at trial that from 1972 when they acquired lot 31 until 1980 when they acquired lot 32, the block wall was used as the boundary. That was consistent with her original affidavit, which stated that "[t]he Property Line has been as it is described in paragraph 5 since at least 1972 when my spouse and I bought Lot 31. The Hansens, who owned Lot 32 until we bought it in 1980, observed and acknowledged this since at least 1972 when my spouse and I moved in next door." Thus, testimony at trial established that the block wall delineated the acquiesced-to boundary between lots 31 and 32 for well more than 15 years before plaintiffs attempted to disavow it.[3]

Additionally, a claim of acquiescence for the statutory period does not require that the possession be hostile or without permission. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). Accordingly, unlike adverse possession where it could be argued that the Randalls were incapable of adversely possessing their own property during the time period they owned both lots, acquiescence merely required the trial court to determine whether a preponderance of the evidence demonstrated that the parties treated a particular boundary line as the property line, *id.* at 458, and the trial court so found. Thus, as the Court explained in *Johnson, supra* at 693:

> Without further summarizing the testimony, it seems undisputed that the predecessors in title of the plaintiffs and defendants recognized and acquiesced in the existing boundary line. The trial court so found and correctly so. We cannot say upon examination of this record that the evidence clearly preponderates in the opposite direction. There is sufficient and competent evidence from which the trial court . . . could find acquiescence.

Because we conclude that the trial court correctly determined that the evidence presented at trial established that there was acquiescence to the block wall boundary by the owners of lots 31 and 32 for well more than the requisite 15 year period,[4] we reverse the trial court's judgment quieting title in plaintiffs and order the trial court to enter a judgment quieting title in defendants. Accordingly, we need not address defendants' claims regarding adverse possession, other forms

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[3] Although Thomas Randall testified at trial that the Randalls purchased lot 31 in 1980, his deposition testimony indicated that lot 31 was purchased in 1972. And, even using the later date of acquisition of 1980, tacking the Randalls' time onto that of defendants, the period of acquiescence ran in 1995, long before plaintiffs took actions to oust defendants in 2003 and even before the Bardens acquired lot 32 in 1997.

[4] As previously discussed, the trial court's error was in not permitting defendants' to tack the period of acquiescence of their, and plaintiffs', predecessors in title, the Randalls and the Bardens, to demonstrate that the requisite 15-year period of acquiescence had occurred.

of acquiescence, or the trial court's reference to a "domino effect." This holding also disposes of plaintiffs' cross-appeal regarding mediation sanctions, as they are no longer the prevailing party.

Defendants next claim that the trial court erred by granting the Bardens summary disposition as to the fraud claim, denying defendants' request to amend their petition to include tortious interference with business relationship and slander of title claims, and awarding the Bardens their attorney fees based on the erroneous assertion that defendants' fraud and business interference claims were frivolous. We disagree. Again, the grant or denial of a motion for summary disposition is reviewed de novo, *Dressel*, *supra* at 561, while a trial court's determination that an action is frivolous is reviewed for clear error, *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002), citing *In re Attorney Fees & Costs*, 233 Mich App 694, 701; 593 NW2d 589 (1999).

We begin with defendants' slander of title claim. The statute of limitations on such an action is one year. *Bonner v Chicago Title Ins Co*, 194 Mich App 462, 471; 487 NW2d 807 (1992). The action at the heart of the alleged slander is the Bardens' warranty deed to plaintiffs that was recorded January 3, 2003. Any slander of title claim that defendants may have had expired January 3, 2004, well before the instant litigation was initiated on April 8, 2005. Accordingly, the trial court did not err by denying defendants' request to amend their petition to add a slander of title claim.

With respect to defendants' fraud and business interference claims, whether they are frivolous under MCR 2.114(F) and MCL 600.2591 is fact dependent. *Kitchen*, *supra* at 662. MCL 600.2591(3)(a) defines "frivolous" as follows:

> "Frivolous" means that at least 1 of the following conditions is met:
>
> (*i*) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
>
> (*ii*) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
>
> (*iii*) The party's legal position was devoid of arguable legal merit.

A claim of common-law fraud requires proof that:

> (1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly, without knowledge of its truth as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage. [*M & D, Inc v McConkey*, 231 Mich App 22, 27; 585 NW2d 33 (1998) (citations omitted).]

Defendants failed to assert any misrepresentations made by the Bardens to defendants. On appeal, they essentially concede that their claim does not fall under the elements of common-law

fraud, but argue that the basis for their claim stems from the following illustration from Restatement Torts, 2d, § 623A, p 336:

> A, in the presence of a circle of his friends, casually says that Blackacre is owned by B. A knows that his statement is false and that Blackacre is owned by C. As a result of the statement one of A's friends who had intended to buy Blackacre from C does not do so. Unless A knew that a prospective purchaser was present or that the statement was likely to reach him, A is not liable to C.

We find no cases that discuss or follow this illustration and defendants cite none. "An appellant may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim." *Ambs v Kalamazoo Co Rd Comm*, 255 Mich App 637, 650; 662 NW2d 424 (2003). Accordingly, defendants are deemed to have abandoned this claim on appeal. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

The elements of the tort of intentional interference with a business relationship are: (1) the existence of a business relationship, (2) knowledge of the relationship on the part of the defendant, (3) an intentional interference which induces or causes breach or termination of the relationship by the defendant, and (4) resulting damage. *Winiemko v Valenti*, 203 Mich App 411, 416; 513 NW2d 181 (1994). The Bardens assert that defendants had no business relationship with plaintiffs. Defendants' sole basis for their claim is the assertion that neighbors, by their very nature as neighbors, have a business relationship with regard to their shared property line. Again, we find no support for this position and defendants have provided none, thereby abandoning this issue. *Yee*, *supra* at 406.

Considering the lack of legal support for defendants' claims of fraud and intentional interference with business relationship, the trial court's finding that that defendants' claims against the Bardens were frivolous is supported by MCL 600.2591(3)(a)(*iii*) and, consequently, does not constitute clear error. *Kitchen*, *supra* at 661.

Defendants also provide no legal support for their position that the Bardens should not have been awarded attorney fees, thereby abandoning the issue. *Yee*, *supra* at 406. We note, however, that under MCL 600.2591, "if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by the party in connection with the civil action." Use of the term "shall" indicates that the award is mandatory. See *South Haven v Van Buren Co Bd of Rd Comm'rs*, 478 Mich 518, 526; 734 NW2d 533 (2007). Accordingly, the trial court did not err in granting the Bardens their attorney fees.

We affirm in part and reverse in part. We remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Michael J. Talbot
/s/ Bill Schuette